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TRIO PETROLEUM, LLC

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION**

In re

TEMBLOR PETROLEUM COMPANY, LLC,

Debtor.

CASE No. 2020-11367

Chapter 7

DCN: PRG-3

**EVIDENTIARY OBJECTIONS TO THE
DECLARATION OF DAN
SCHOLEFIELD IN SUPPORT OF
AMENDED MOTION OF GENAUTICA
OIL HOLDINGS, LP TO VACATE SALE
ORDER, AS AMENDED; MOTION TO
STRIKE**

Date: June 14, 2023

Time: 1:30 p.m.

Place: Courtroom 11, Dept. A
2500 Tulare Street, Suite 2501
Fresno, CA 93721

Hon. Jennifer Niemann

1 Creditor Trio Petroleum, LLC (“Trio”) respectfully submits these Evidentiary Objections
2 to the *Declaration of Dan Scholefield in Support of Amended Motion to Genautica Oil Holdings,*
3 *LP to Vacate Sale Order, as Amended* [Dk No. 520]. Trio moves to strike all testimony and
4 physical evidence for which an objection is made and sustained.

<u>TESTIMONY</u>	<u>OBJECTIONS</u>
1. ¶ 3, 2:6-7 “In 2021, I was told by Stan Eschner, Trio’s chairman, that the Project was ready to go and could start injecting steam and producing oil ‘tomorrow.’”	1. Hearsay [Fed. R. Evid. 802].
2. ¶ 4, 2:8 “Acquisition of the Property would give Trio majority control of the Project.”	2. Lack of relevance. [Fed. R. Evid. 402] (this does not give any explanation as to how Trio’s current rights are enhanced or diminished and seems to be provided just to suggest something nefarious).
3. ¶ 8, 2:20-22 “Genautica and Prudent bid at the August 10th auction based on the representations of the Brokers that the Project was ready to produce oil, <i>representations that we later learned were not correct.</i> ”	3. Lack of Foundation/Lack of Personal Knowledge [Fed R. Evid. 601] (no foundation is established for declarant's personal knowledge as to how he knows what induced Prudent to bid and how to bid; declarant is speculating here). As to the italicized portion, Lack of Foundation [Fed R. Evid. 601] and Improper Lay Opinion [Fed R. Evid. 701] (declarant is providing an expert opinion as to the status of a well without laying any foundation for his opinion). As to the italicized portion, Best Evidence Rule [Fed R. Evid. 403/1002] (if the declarant is basing his opinion on a document, then the best evidence of the fact is the document itself).

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<u>TESTIMONY</u>	<u>OBJECTIONS</u>
<p>4. ¶ 9, 2:26-3:1-3</p> <p>“During those conversations, it was represented that the Project was ready to be produce oil. The Brokers’ statements seemed to confirm what Trio told me in 2021. <i>I was later told by Kris Pitta (“Pitta”) of Prudent Resources that he had had similar conversations prior to the auction.</i>”</p>	<p>4. Hearsay [Fed. R. Evid. 802] (other than reporting what was said out of court, the statement is also rather vague, equivocal, and subject to interpretation [“seemed”]; the italicized portion is double hearsay).</p>
<p>5. ¶ 9, 3:3-5</p> <p>“<i>The representation that the Project is ready to produce oil is crucial to the value of the property</i>, and Pitta and I relied on this representation in formulating our bids at the auction. <i>However, this representation was discovered to be incorrect.</i>”</p>	<p>5. Lack of Foundation/Lack of Personal Knowledge [Fed R. Evid. 601] (no foundation is established for declarant's personal knowledge as to how he knows what induced Prudent to bid and what it relied upon; declarant is speculating here).</p> <p>As to the italicized portions, Lack of Foundation [Fed R. Evid. 601] and Improper Lay Opinion [Fed R. Evid. 701] (declarant is providing an expert opinion as to how the well is valued without laying any foundation for his opinion; similarly, in the second italicized section, the declarant is providing an expert opinion as to the status of a well without laying any foundation for his opinion).</p> <p>As to the italicized portion, Best Evidence Rule [Fed R. Evid. 403/1002] (if the declarant is basing his opinion on a document, then the best evidence of the fact is the document itself).</p>
<p>6. ¶ 11, 3:10-12</p> <p>“<i>Consistent with the Brokers’ statements that the property was ready to produce</i>, the marketing materials were posted on the Brokers’ website under the category ‘Producing Properties.’”</p>	<p>6. Improper Lay Opinion [Fed R. Evid. 701] and Hearsay [Fed. R. Evid. 802] (the italicized portion is argument masquerading as evidence and hearsay).</p>

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<u>TESTIMONY</u>	<u>OBJECTIONS</u>
<p>7. ¶ 12, 3:17-22</p> <p>“The marketing materials imply that the permit that awaited final approval was recently approved as of May 21, 2021 . . . The information in the 2021 Marketing Materials further confirmed <i>the Brokers’ statement that the Project was ready to produce.</i>”</p>	<p>7. Improper Lay Opinion [Fed R. Evid. 701] (this is argument).</p> <p>As to the italicized portion, Hearsay [Fed. R. Evid. 802].</p>
<p>8. ¶ 13, 3:22-27</p> <p>“After the Sale Order was entered, however, I came to learn that the representation that Project was ready to produce oil was incorrect. The Project is not producing or ready to produce oil; rather the Project is presently inoperable, the Project is likely one or more years away from being operable, and the Project will require significant further investment before becoming operable and before required approvals can be obtained.</p>	<p>8. Lack of Foundation [Fed R. Evid. 601] and Improper Lay Opinion [Fed R. Evid. 701] (declarant is providing an expert opinion as to the status of a well without laying any foundation for his opinion).</p> <p>Best Evidence Rule [Fed R. Evid. 403/1002] (if the declarant is basing his opinion on a document, then the best evidence of the fact is the document itself).</p>
<p>9. ¶ 13, 3:27-4:4</p> <p>“In fact, Genautica has recently been advised by California Geologic Energy Management (“CalGEM”) which is one of several regulatory bodies governing oil and gas in California, that comprehensive updates and reviews are required to reestablish Underground Injection Control (“UIC”) related permits and to proceed with several essential components of the Project including steam injection, oil and gas well production and storage, and proposed water disposal.”</p>	<p>9. Hearsay [Fed. R. Evid. 802] (the discussion with CalGEM is an out of court statement and declarant is trying to prove the contents of that statement).</p> <p>Lack of Foundation [Fed R. Evid. 601] and Improper Lay Opinion [Fed R. Evid. 701] (declarant is providing an expert opinion without laying any foundation for his opinion, and using hearsay statements as the foundation for his opinion).</p> <p>Best Evidence Rule [Fed R. Evid. 403/1002] (if the declarant is basing his opinion on a document, then the best evidence of the fact is the document itself).</p>

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<u>TESTIMONY</u>	<u>OBJECTIONS</u>
<p>10. ¶ 14, 4:5-9</p> <p>3 <i>I also learned that the materials prepared by</i> 4 <i>the Brokers were inaccurate and misleading.</i> 5 The representation that the Project was idled 6 “pending final approval of the steam injection 7 permit” is inaccurate. The Project was idled 8 because of an expensive, time-consuming 9 permit updating and approval process 10 involving the critical new water disposal well 11 “WD-2” application.”</p>	<p>10. Lack of Foundation [Fed R. Evid. 601] (no foundation is laid for how the declarant knows this “fact” to be true).</p> <p>Best Evidence Rule [Fed R. Evid. 403/1002] (if the declarant is basing his opinion on a document, then the best evidence of the fact is the document itself).</p> <p>As to the italicized portion, Improper Lay Opinion [Fed R. Evid. 701] (this argument and a legal conclusion).</p>
<p>11. ¶ 15, 4:10-19</p> <p>12 “With regard to the steam injection permit 13 specifically referenced in the 2021 Marketing 14 Materials, while it is true in that in 2019 Trio 15 obtained a steam injection permit, as 16 indicated in an email dated September 13, 17 2022 from Pitta to the Trustee, in 2021, 18 CalGEM provided written notice to Trio that 19 the Project would need to undergo Project 20 Approval Letter (‘PAL’) review. Thus, the 21 injection permit was no longer current. In 22 other words, the representation in the 23 marketing materials that the Project was idled 24 pending final review of the injection permit 25 was incorrect, the steam injection and/or 26 water disposal permit needed to be brought 27 current. A true and correct copy of an email 28 from the Trustee to me, forwarding an email 29 from Pitta to the Trustee and Brokers, dated 30 September 13, 2022 (‘Sept. 13 Email’) is 31 attached hereto as Exhibit D.”</p>	<p>11. Hearsay [Fed. R. Evid. 802] and Improper Lay Opinion [Fed R. Evid. 701] (this has many levels of hearsay; <u>first</u>, Exhibit D is a statement from Pitta of what he <i>heard</i> from CalGEM; <u>second</u>, the statement itself refers to a letter that is not attached; and <u>third</u>, the declarant just repeats the contents of the email and then makes argument from there).</p> <p>Best Evidence Rule [Fed R. Evid. 403/1002] (the declarant is basing his opinion on a document, then the best evidence of the fact is the document itself; that document has not been provided here).</p>

<u>TESTIMONY</u>	<u>OBJECTIONS</u>
<p>12. ¶ 16, 4:20-22</p> <p>3 “Further, while the 2019 letter from CalGEM 4 issuing the permit was provided to Prudent, 5 the 2021 letter saying the Project would need 6 to undergo PAL review was not provided to them until after the auction. Exh. D (Sept. 13 Email).”</p>	<p>12. Lack of Foundation [Fed R. Evid. 601] (no foundation is laid for how the declarant knows this “fact” to be true).</p> <p>Improper Lay Opinion [Fed R. Evid. 701] (without sufficient foundation, this is speculation).</p> <p>Hearsay [Fed. R. Evid. 802] (this is just repeating the contents of an email).</p>
<p>13. ¶ 17, 4:23-27</p> <p>9 “The representations in the marketing 10 materials regarding the Debtor having 11 received necessary aquifer exempt UIC 12 permits are also incorrect. I only recently 13 learned the Project has been “on hold” by 14 CalGEM since 2018 because the existing 15 water disposal well is insufficient for the 16 Project as planned. In order to secure the 17 approvals and permits required to proceed, an updated project approval application must be submitted for approval and permitting to various governmental oversight agencies, none of which has happened nor is it certain to happen.”</p>	<p>13. Hearsay [Fed. R. Evid. 802] (the discussion with CalGEM is an out of court statement and declarant is trying to prove the contents of that statement).</p> <p>Lack of Foundation [Fed R. Evid. 601] and Improper Lay Opinion [Fed R. Evid. 701] (declarant is providing an expert opinion without laying any foundation for his opinion, and using hearsay statements as the foundation for his opinion).</p> <p>Best Evidence Rule [Fed R. Evid. 403/1002] (if the declarant is basing his opinion on a document, then the best evidence of the fact is the document itself).</p>

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<u>TESTIMONY</u>	<u>OBJECTIONS</u>
<p>14. ¶ 19, 5:13-20</p> <p>“During and after the auction, it became apparent that the Brokers were mistaken and confused about whether and to what extent Trio would assert claims against the Debtor’s working interest ... <i>As a result, the Trustee and Brokers provided the bidders with materially different terms of the sale, and the bidders bid at auction based on different terms. If for no other reason, the sale should be set aside due to the fact that the only two bidders competing in the auction were given different sets of bid instructions by the Brokers and Trustee; an auction was conducted in which bidders unknowingly were not bidding on the same terms, conditions, and/or assets.</i>”</p>	<p>14. As to the italicized portions, Lack of Foundation/Lack of Personal Knowledge [Fed R. Evid. 601] (no foundation is established for declarant's personal knowledge as to how he knows what induced Prudent to bid and what it relied upon; declarant is speculating here).</p> <p>As to the italicized portion, Best Evidence Rule [Fed R. Evid. 403/1002] (if the declarant is basing his opinion on a document, then the best evidence of the fact is the document itself).</p> <p>As to the entirety, Improper Lay Opinion [Fed R. Evid. 701] (declarant is simply arguing here).</p>
<p>15. ¶ 20, 5:21-25</p> <p>“The Brokers represented to me numerous times before and after the auction that Trio’s claims would be extinguished or otherwise cut off against the buyer by the sale in the bankruptcy case. Later, I learned that Adams had made the same representations to Pitta, and as a result, <i>at the auction Prudent was bidding for the Property believing the Property would be transferred free and clear of Trio’s purported interests.</i>”</p>	<p>15. Hearsay [Fed. R. Evid. 802].</p> <p>Lack of Foundation [Fed R. Evid. 601] (as to what Adams told Pitta).</p> <p>As to the italicized portions, Lack of Foundation/Lack of Personal Knowledge [Fed R. Evid. 601] (no foundation is established for declarant's personal knowledge as to how he knows what induced Prudent to bid and what it relied upon; declarant is speculating here).</p>

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<u>TESTIMONY</u>	<u>OBJECTIONS</u>
<p>16. ¶ 21, 5:26-6:7</p> <p>3 “On August 17, 2022, after the auction, I 4 received a phone call from Adams in which 5 he said that Pitta was upset that Prudent was 6 being asked to pay the Debtor’s prior 7 outstanding liabilities. During the call, I 8 stated that the bankruptcy papers said that 9 liabilities were included in the terms of sale, 10 but the Brokers disagreed. Accordingly, I sent 11 Adams the Sale Motion, Declaration and 12 Exhibit [Dkts, 416, 418, and 419] which had 13 been sent to me by the Trustee. A true and 14 correct copy of my August 17, 2022 email 15 exchange with Adams (without attachments) 16 is attached hereto as Exhibit G. In response, 17 Adams sent me the Notice of Hearing, Dkt. 18 417, which had been sent to him by the 19 Trustee, and he told me he had not seen the 20 other documents.”</p>	<p>16. Hearsay [Fed. R. Evid. 802].</p>
<p>17. ¶ 22, 6:8-12</p> <p>15 “Adams told me that he relied on the Notice 16 of Hearing which omitted any reference to the 17 sale being subject to any other claims or 18 interests, and that, as a result, he believed that 19 the sale would extinguish Trio’s claim against 20 the Debtor’s working interest which would stay with the estate. Adams told me that he provided the Notice of Hearing to Prudent, namely Dkt. 417.”</p>	<p>17. Hearsay [Fed. R. Evid. 802].</p>
<p>18. ¶ 23, 6:13-15</p> <p>22 “At the auction, relying on the misstatements 23 to Prudent both as to the condition of the 24 property and as to Prudent’s potential for 25 liability to Trio, Prudent was enticed to bid up the Property to \$101,000, 10 times Trio’s stalking horse bid.”</p>	<p>18. Lack of Foundation/Lack of Personal Knowledge [Fed R. Evid. 601] (no foundation is established for declarant’s personal knowledge as to how he knows what induced Prudent to bid and what it relied upon; declarant is speculating here).</p>

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<u>TESTIMONY</u>	<u>OBJECTIONS</u>
<p>19. ¶ 24, 6:16-22</p> <p>“After the auction, Prudent learned that not only was the information about the permitting and status of the Project incorrect, but also that Trio would claim that Prudent would potentially be charged with the Debtor’s pre-petition liabilities, despite the representations the bidders received to the contrary . . . <i>Based on my conversations with Pitta, I believe that had Prudent known of the true facts, it likely would not have participated in the auction, and Genautica’s opening bid at \$15,000 would have been the highest bid.</i>”</p>	<p>19. Lack of Foundation/Lack of Personal Knowledge [Fed R. Evid. 601] (no foundation is established for declarant's personal knowledge as to how he knows what induced Prudent to bid and what it relied upon; what Prudent knew and when; declarant is speculating here).</p> <p>As to the italicized portion, Improper Lay Opinion [Fed R. Evid. 701] (declarant is speculating and his speculation is based on hearsay).</p>
<p>20. ¶ 25, 6:25-7:2</p> <p>“...even though the true facts revealed that the Property was worth substantially less than previously thought.”</p>	<p>20. Lack of Foundation [Fed R. Evid. 601] and Improper Lay Opinion [Fed R. Evid. 701] (declarant is providing an expert opinion without laying any foundation for his opinion, and using hearsay statements as the foundation for his opinion).</p> <p>Best Evidence Rule [Fed R. Evid. 403/1002] (if the declarant is basing his opinion on a document, then the best evidence of the fact is the document itself).</p>
<p>21. ¶ 27, 7:6-8</p> <p>“Awarding the Property to Trio, for the lowest bid, rather than reopening the auction to fair and transparent competitive bidding, that will guaranty the estate a 50% higher price for the Debtor’s property, is not in the interests of justice.”</p>	<p>21. Improper Lay Opinion [Fed R. Evid. 701] (this is just argument)</p>

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<u>TESTIMONY</u>	<u>OBJECTIONS</u>
<p>22. ¶ 28, 7:9-12</p> <p>“The 2021 Marketing Materials contain information, including graphs and charts, that is not readily accessible to any entity other than Trio, as Operator of the Project. The information in the marketing materials must have come from Trio as operator of the Project. Such information is unlikely to have come from any other source.”</p>	<p>22. Improper Lay Opinion [Fed R. Evid. 701] (speculation)</p>
<p>23. ¶ 29, 7:13-16</p> <p>“Trio, as Operator, is the entity that failed to obtain the necessary permits to let the Project proceed. Trio never informed Genautica, nor was Genautica informed by the Brokers or Trustee, <i>that CalGEM put the water disposal well application on hold together with the entire PAL, or of any of the other challenges facing the Project</i>, all of which was concealed by Trio.”</p>	<p>23. Improper Lay Opinion [Fed R. Evid. 701] (again, argument)</p> <p>As to the italicized portion, based on the quotations from the evidentiary objections above, this is based on hearsay, lacks foundation, and is improper lay opinion. The preceding evidentiary objections are incorporated by reference. Lack of Foundation [Fed R. Evid. 601], Improper Lay Opinion [Fed R. Evid. 701], and Hearsay [Fed. R. Evid. 802].</p>
<p>24. ¶ 30, 7:17-19</p> <p>“Additionally, I was recently informed that Trio instructed CalGEM to put the Project on the backburner and reassign its project review engineer to Trio’s unrelated South Salinas prospect.”</p>	<p>24. Hearsay [Fed. R. Evid. 802] (the discussion that is the basis of the testimony is an out of court statement and declarant is trying to prove the contents of those statements).</p> <p>Lack of Foundation [Fed R. Evid. 601] (no foundation is provided for how, when, and from whom the declarant received this “information” from).</p> <p>Best Evidence Rule [Fed R. Evid. 403/1002] (if the declarant is basing his opinion on a document, then the best evidence of the fact is the document itself).</p>

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2 DATED: May 31, 2023

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